1431.

SUPREME COURT OF THE UNITED STATES.

No. 84.

THOMAS B. WINSTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT U. S., NORTHERN DISTRICT OF MISSISSIPPI.

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Exemplefication.

THE UNITED STATES
vs. } 111.
THOMAS W. WINSTON.

Be it remembered, that at a district court of the United States for the northern district of Mississippi, began and held at the town of Pontotoc, in said district, on the first Monday of December, A. D. 1839—present, the honorable Samuel J. Gholson, judge of said court, presiding—the following proceedings were had in said cause, to wit:

"THE UNITED STATES
vs. } 26.
THOMAS B. WINSTON.

WEDNESDAY, *December the* 11*th*, 1839.

This cause is continued on affidavit, until the next term of this court."

And afterwards, to wit, on the 17th day of June, 1840, being a day of the June term of said court, the further proceedings were had in the aforesaid cause as follows, to wit:

"THE UNITED STATES
vs. } 5.
THOMAS B. WINSTON.

WEDNESDAY, *June the* 17*th*, 1840.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit, jury No. 1, who, being elected, tried, and sworn, well and truly to try the issue joined, retired to consult of their verdict, and afterwards returned into court and say that they cannot agree; whereupon, by consent of parties, it is ordered by the court, that one of said jurors be withdrawn, and cause continued, with leave to amend pleadings."

Also, afterwards, to wit, on the 14th day of December, 1840, being a day of the December term of said court, the further proceedings were had in said cause as follows, to wit:

"THE UNITED STATES
vs. } 3.
THOMAS B. WINSTON.

MONDAY, *December the* 14*th*, 1840.

This cause is continued, by consent of parties, until the next term of this court."

And also, afterwards, to wit, on the 10th day of June, 1841, being a day of the June term of said court, the further proceedings were had in the aforesaid cause as follows, to wit:

"THE UNITED STATES
vs.
THOMAS B. WINSTON. } 3.

THURSDAY, *June the* 10*th*, 1841.

Continued, by consent of parties, until the next term of this court."

And afterwards, to wit, at the December term, 1841, of said court, the said plaintiffs, by attorney, filed in the office of said clerk a declaration in the words and figures following, to wit:

"District court for the northern district of Mississippi, December term, 1841.

The United States of America, by attorney, complain of Thomas B. Winston, being in the custody of the marshal, &c., of a plea of trespass on the case; for that, whereas, the said defendant, before and at the time of the delivery of a certain promissory note or writing obligatory as hereinafter next mentioned, was, and from thence hitherto hath been, a notary public. And whereas, also, the said plaintiffs, whilst the said defendant was such notary public as aforesaid, to wit, on the fourth day of January, A. D. 1838, at, to wit, Columbus, in the district aforesaid, caused to be delivered to the said defendant, and the said defendant then and there accepted and received, of and from the said plaintiffs, a certain promissory note or writing obligatory of the following words and figures, to wit:

$537 $\frac{27}{100}$.

On or before the first day of January, eighteen hundred and thirty-eight, I promise to pay Robert E. Harris and Joseph Grigsby, or order, the sum of five hundred [and] thirty-seven $\frac{27}{100}$ dollars, for value received.

Given under my hand and seal, this fourteenth day of September, eighteen hundred and thirty-six.

LAERTES ROGERS, [SEAL.]

Which said note or writing obligatory was at the time, and before the delivery of the same, endorsed by the said Robert E. Harris and Joseph Grigsby; and said plaintiffs aver, that the said note or writing obligatory was delivered to the said defendant at the time aforesaid, to be presented to the said Laertes Rogers for payment thereof, for certain reasonably reward to be therefore paid to the said defendant, but that the said defendant did not, nor would, at the time when the said note or writing obligatory became due and payable according to the tenor and effect thereof, present the same for payment, either personally to the said Laertes Rogers, or at the residence or place of business of said Rogers, in Columbus,

in the district aforesaid; but said defendant, not regarding his duty as such notary public, wholly neglected and refused to make a legal presentment of said note or writing obligatory to the said Laertes Rogers, who was, at the time aforesaid, residing in Columbus, in said district. By means whereof, the said Robert E. Harris and the said Joseph Grigsby were wholly released from liability as endorsers upon said note or writing obligatory, by means whereof the said sum of money, in said note specified, was entirely lost to the said plaintiffs.

And whereas, also, the said defendant, before and at the time of the delivery of a certain promissory note or writing obligatory, as hereinafter next mentioned, was, and from thence hitherto has been, a notary public. And whereas, also, the said plaintiffs, whilst the said defendant was such notary public as aforesaid, to wit, on the 4th day of January, A. D. 1838, at, to wit, Columbus, in the district aforesaid, caused to be delivered to the said defendant, and the said defendant then and there accepted and received, of and from the said plaintiffs, a certain promissory note or writing obligatory of the following words and figures, to wit:

$537 $\frac{27}{100}$.

On or before the first day of January, eighteen hundred and thirty-eight, I promise to pay Robert E. Harris and Joseph Grigsby the sum of five hundred and thirty seven $\frac{27}{100}$ dollars, for value received.

Given under my hand and seal, this fourteenth day of September, eighteen hundred and thirty-six.

LAERTES ROGERS, [SEAL.]

Which said note or writing obligatory was at the time, and before the delivery of the same, endorsed by the said Robert E. Harris and Joseph Grigsby; and said plaintiffs aver, that the said note or writing obligatory, so endorsed as aforesaid, was delivered to the said defendant at the time aforesaid, to be presented to the said Laertes Rogers, for payment thereof, at the time it became due and payable according to *the* its tenor and effect, and in case of non-payment thereof, then, and in that case, he, the said defendant, as notary public, was to give due and legal notice of the non-payment of said note or writing obligatory to said endorsers aforesaid, for certain reasonable reward to be therefore paid to the said defendant; but the said defendant, although said note or writing obligatory was not paid by the said Laertes Rogers, did not, nor would, give due and legal notice of the non-payment of the said note or writing obligatory to the said endorsers of said note or writing obligatory, but said defendant, not regarding his duty as notary public, wholly neglected and refused to give due and legal notice of the non-payment of said note or writing obligatory to said endorsers, Robert E. Harris and Joseph Grigsby, whereby the said Robert E. Harris and Joseph Grigsby were wholly and entirely released from

liability as endorsers to said note or writing obligatory. By means whereof, the said sum of money, in said note specified, was entirely lost to the said plaintiffs; wherefore, the said plaintiffs say that they are injured, and have sustained damage, to the amount of one thousand dollars; and therefore they sue.

O. F. BLEDSOE,
U. S. att'y for the N. D. of Mississippi.

And the said defendant by attorney filed at said December term of said court, 1841, his certain plea in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of the U. S. for the northern district of Mississippi:

UNITED STATES
vs.
THOMAS B. WINSTON. } December term, 1841.

And the said defendant, by his attorney, comes and defends the wrong and injury, when, &c., and says he is not guilty of the said several supposed grievances above laid to his charge, or any, or either of them in manner and form as the plaintiff has above thereof complained against him, and of this he puts himself upon the country.

HARRIS & HARRISON,
Attorneys for defendant.

And the plaintiffs do the like.

O. F. BLEDSOE, *Plaintiffs' attorney.*

And afterwards, to wit, on the 1st day of January, 1842, being a day of the December term of said court, 1841, the following proceedings were had in said cause, to wit:

THE UNITED STATES
vs.
THOMAS B. WINSTON. } 3.

Saturday, January the 1st, 1842. This cause is continued, on application of defendant, until the next term of this court.

Also, afterwards, to wit, on the 10th day of June, 1842, being a day of the June term of said court, the further proceedings were had in said cause as follows, to wit:

THE UNITED STATES
vs.
THOMAS B. WINSTON. } 2.

Friday, June the 10th, 1842. This day came the parties, by their attorneys, and then came a jury of good and lawful men, to wit:

Jury No. 1, being Fleming Calbert and eleven others, who being elected, tried, and sworn, well and truly to try the issue joined, re-

tired to consult of their virdict, and then returned into court and say, that they cannot agree; whereupon, by consent of the parties, it is ordered by the court, that David Atkinson, one of said jury, be withdrawn, and that this cause be continued, and that plaintiffs have leave to amend their pleadings.

And also, afterwards, to wit, on the 15th day of December, 1842, being a day of the December term of said court, the further proceedings were had in said cause as follows, to wit:

THE UNITED STATES
vs. } 4.
THOMAS B. WINSTON.

Thursday, December the 15th, 1842. This day came the parties, by their attorneys, and then came a jury of good and lawful men, to wit:

Jury No. 3, being Aaron Redus and eleven others, who, being elected, tried, and sworn, well and truly to try the issue joined, upon their oaths do say, that they find the issue in favor of the plaintiffs, and assess their damages to the sum of seven hundred and fifty dollars and thirty-six cents. It is therefore considered by the court, that plaintiffs recover of said defendant the damages aforesaid by the jury assessed, and also the costs in this cause expended.

To which said judgment of the court the defendant, by attorney, filed his bill of exceptions, in the words and figures follows, to wit:

UNITED STATES OF AMERICA,
United States district court northern district of Mississippi:

UNITED STATES
vs. } Of December term, A. D. 1842.
THOMAS B. WINSTON.

Be it remembered that on this, the 13th day of December, A. D. 1842, being a day in the term aforesaid, before the honorable Sam. J. Gholson, presiding judge of said court, came on to be heard the said cause, and upon the trial thereof, and after said cause had been regularly submitted to a jury upon the issue between the parties joined, the said defendant, by his attorney, offered to prove by one Robert E. Harris, a witness produced and sworn on behalf of defendant, as follows, to wit:

That one Laertes Rogers, on the 1st of September, 1836, gave and executed to the said Harris, and one Joseph Grigsby, his writing obligatory or note under seal, for the sum of five hundred and thirty-seven dollars and seventy-seven cents, due on the 1st day of January, 1838. Which is the writing obligatory described in the declaration, and which was given for, and in consideration of, a tract of land sold by Harris & Grigsby to said Rogers. That said Harris & Grigsby afterwards transferred the same to General Wiley P. Harris, and at his request directed it to be paid to bearer. That at

the time the same was transferred and delivered to said Harris, it was the express understanding, that said witness and Grigsby were not to be held responsible over an account of said endorsement, but the same was made to Wiley P. Harris to show that the interest of the note was no longer in said witness and Grigsby, and to enable the said W. P. Harris to dispose of the same as belonging to him. The said witness states, that afterwards, the said W. P. Harris, on account of his defalcation to the Government, surrendered said writing obligatory to William M. Gwinn, the United States marshal, for the benefit of the Government of the United States. The said witness states, that he made out the list of the effects surrendered by said Wiley P. Harris to said marshal, among which was said writing obligatory, and distinctly recollects that it was the understanding and agreement with the said marshal, that the said witness and said Grigsby [who] had transferred said sealed note [were] not to be held responsible on their said endorsement for the payment of said sum of money.

Whereupon the court, on motion of the United States district attorney, excluded said testimony from the consideration of the jury, and refused to admit the same as competent evidence in said cause; to which opinion and judgment of the court in sustaining said motion to eject said testimony, and in refusing to admit the same as evidence before the jury, the said defendant then and there, and before the jury had retired from the box, excepted and tendered this his bill of exceptions, and prayed that the same be made and considered a part of the record and proceedings in said cause; all of which is done accordingly.

Given under my hand and seal, this 13th day of December, A. D. 1842.

S. J. GHOLSON, [SEAL.]
Judge of United States district court, northern district of Miss.

Copy of defendants' bond for writ of error, to wit, "United States district court for the northern district of Mississippi."

Northern district of Mississippi of December term, A. D. 1842.

UNITED STATES
vs.
THOMAS B. WINSTON. } In error.

Know all men by these presents that we, Thomas B. Winston and William B. Winston, are held and firmly bound unto the United States in the sum of two thousand dollars, to be paid to said United States; to which payment, we, jointly and severally, bind ourselves, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this the 13th day of December, A. D. 1842.

Whereas the said Thomas B. Winston has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judg-

ment rendered in the above entitled suit by the district court of the United States for the northern district of Mississippi.

Now, therefore, the condition of this obligation is such, that if the above named Thomas B. Winston shall prosecute his said writ of error with effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise it shall be and remain in full force and virtue.

THOMAS B. WINSTON, [SEAL.]
WM. B. WINSTON. [SEAL.]

I approve of the above bond and security, January 2nd, 1843.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify, that the above and foregoing nine pages contain a full, true, and complete transcript of all the proceedings had in the aforesaid cause in said district court, that *now* remain of record and on file in my office.

Given under my hand, and the seal of said court, at office in [SEAL.] Pontotoc, this 7th day of August, A. D. 1843.

G. M. RAGSDALE, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States for the northern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court before you, between the United States and Thomas B. Winston, a manifest error has happened, to the great damage of the said Thomas B. Winston, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, on the first Monday in January next, in said Supreme Court to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the United States Supreme Court, this the 15th day of De-
[SEAL.] cember, A. D. 1842, and of the independence of the United States the 67th.

G. M. RAGSDALE,
Clerk U. S. district court for the northern dist. of Miss.

(Endorsed.) Notice and service acknowledged, Dec'r 15th, 1842.

O. F. BLEDSOE,
United States dist. atto. N. D. Miss.

UNITED STATES OF AMERICA:

To Oscar F. Bledsoe, esqr., United States district attorney for the northern district of Mississippi, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in January next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein Thomas B. Winston is plaintiff, and you are defendant in error, to shew cause, if any there be, why judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, judge of the United States district court, northern district of Mississippi, this 15th day of December, A. D. 1842.

S. J. GHOLSON. [SEAL.]

(Endorsed.) Service and notice acknowledged, 15th December, 1842.

O. F. BLEDSOE,
United States dist. atto. northern dist. of Miss.

Know all men by these presents that we, Thomas B. Winston and Stephen Cocke, are held and firmly bound unto the United States in the sum of two hundred dollars; but to be void, on condition that the said Thomas B. Winston shall pay all costs charge-[a]ble to him in the prosecution of his writ of error to the Supreme Court of the United States, in the case of Thomas B. Winston against the United States.

Given under our hands and seals, this 1st day of December, 1843.

THOMAS B. WINSTON, [SEAL.]
STEPHEN COCKE. [SEAL.]

Filed 27th December, 1843.